Filed 2/6/19 Marriage of Price CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of JULIE C.and ANTHONY PRICE, JR.	
JULIE C. PRICE, Appellant, v. ANTHONY PRICE, JR., Respondent.	E069342 (Super.Ct.No. SWD1501355) OPINION

APPEAL from the Superior Court of Riverside County. F. Paul Dickerson III, Judge. Affirmed.

Rancho Family Law Group and Jonathon A. Zitney for Appellant.

No appearance for Respondent.

This is a divorce proceeding between wife Julie Price and husband Anthony Price. They have four children. Julie claims to be opposed to immunization on religious grounds. In 2014 and 2015, she exempted the children from otherwise state-mandated

immunization by filing personal belief exemption forms. Effective January 1, 2016, the Legislature eliminated the personal belief exemption, going forward; however, it allowed children for whom a personal belief exemption had previously been filed to remain exempt during a phase-out period (of variable length, depending on the child's grade level).

During the 2017-2018 school year, Julie and Anthony's children were still exempt. Nevertheless, on Anthony's motion, and over Julie's opposition, the trial court ordered Julie to have the children immunized.

Julie appeals. She contends:

1. The trial court erred by advancing the hearing on the motion.

2. If a child is exempt from immunization under the state immunization statutes, a court lacks the power to order the child immunized under a best interest standard.

3. The immunization order violates the constitutional right to the free exercise of religion.

We find no error. Hence, we will affirm.

I

PROCEDURAL BACKGROUND

In June 2015, Julie filed for divorce. In August 2015, the trial court made an interim order giving the spouses joint legal custody of the children, giving Julie sole physical custody, and giving Anthony visitation.

In July 2017, Anthony filed a request for an order that Julie have the children immunized. Julie filed a responsive declaration.

On October 2, 2017, after a hearing, the trial court ordered Julie to immunize the children "forthwith." However, it stayed its order for two weeks to allow Julie to file an appeal.

On October 13, 2017, Julie appealed. On October 27, 2017, she filed a petition for writ of supersedeas; on October 30, 2017, we denied it. On October 31, 2017, however, the trial court reconsidered and stayed its order pending appeal.

II

FACTUAL BACKGROUND

The following facts are taken from the declarations in support of and in opposition to the immunization order.

Julie and Anthony have four children. The children have never been immunized. According to Julie, she and Anthony agreed not to immunize them; Anthony claims that he only agreed not to immunize them until they were three years old. Julie believes that immunizing them would put them at risk. Anthony, however, believes (or, at least, has come to believe) that failing to immunize them puts them at risk.

In 2014 (as to the oldest child) and 2015 (as to the other three children), Julie filed personal belief exemption forms stating, "I am a member of a religion which prohibits me from seeking medical advice or treatment . . . ."

In 2017, while the divorce was pending, Anthony scheduled an appointment to have the children immunized. Their health care providers had advised him that there were no medical reasons not to do so. Due to Julie's opposition, however, the health care providers refused to immunize them without a court order.

In Julie's view, Anthony was seeking immunization only "as a bargaining piece to control . . . ."

III

APPEALABILITY

Julie contends that the challenged order is appealable under the collateral order doctrine. (See *In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368.) We need not decide whether that is correct, because there is a simpler and more readily explained basis for appealability.

The challenged order directed Julie to immunize the children. An injunction is an order requiring a person to perform or not to perform a particular act. (*PV Little Italy, LLC v. MetroWork Condominium Assn.* (2012) 210 Cal.App.4th 132, 143.) Thus, the order was an injunction; and an injunction is appealable. (Code Civ. Proc., § 904.1, subd. (a)(6).)

IV

THE ADVANCEMENT OF THE DATE OF THE HEARING

Julie contends that the trial court erred by advancing the date of the hearing.

A. *Additional Factual and Procedural Background*.

Anthony's request for order was set for hearing on October 3, 2017.

When the request for order was filed, Julie was represented by counsel. Immediately before she filed her responsive declaration, however, her attorney substituted out. Thus, she filed her responsive declaration in pro. per. Immediately after she filed her responsive declaration, her attorney substituted back in again.

Previously, the trial court had set a mandatory settlement conference for October 2, 2017. During that conference, Anthony's counsel asked that the request for order be advanced and heard that same day.

Julie's counsel responded: " . . . I have to step out. I'm basically recusing myself from that motion. But on [Julie's] behalf, . . . I ask that it be heard tomorrow as it was set. It's a very, very important issue to my client, but yet one that I can't participate in, so I think it's inappropriate to advance it and deny it when she's trying to do the best she can herself."

The trial court ruled: "I'm going to do it today, because [Julie's counsel] can't be heard on this. He's recused himself." Julie's counsel left the courtroom. The trial court then proceeded to hear argument from Julie and, ultimately, to grant the request for order.

B. *Discussion*.

The decision to advance the hearing was a matter of the trial court's discretion. "[C]ourts have inherent authority to control their own calendars and dockets . . . [citation]." (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 267.) "[A] trial court must

be accorded wide latitude in the exercise of discretion to control and regulate its own calendar. [Citation.]" (*Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 497.)

We therefore apply the abuse of discretion standard of review. "A ruling that constitutes an abuse of discretion has been described as one that is 'so irrational or arbitrary that no reasonable person could agree with it.' [Citation.]" (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.)

Here, there was good cause to advance the hearing, so that the parties — and Anthony's counsel — would not have to come back the next day. On the other side of the ledger, Julie made no showing of particularized prejudice. Admittedly, her counsel did object. However, he did not claim that she was unprepared to argue the request for order; he noted that she was in pro. per., but that would still be true on October 3. She had already filed her responsive declaration in pro. per., so she had to have considered the facts and the issues. Also, she expected to have to argue the matter the very next day. Absent a showing to the contrary — which Julie and her counsel did not make — it was reasonable to conclude that she was prepared to proceed.

Julie asserts that the challenged order was made "without notice, without an opportunity to be heard, and . . . [without an] opportunity to assert a defense . . . ." Not so.

Statutorily, Julie was entitled to 16 court days' notice, plus five calendar days because the request for order was served by mail. (Code Civ. Proc., § 1005, subd. (b).) The trial court could shorten this time (*ibid.*); however, it was unnecessary to do so,

because the request for order was served on August 4 — i.e., 39 court days before the October 2 hearing.

Constitutionally, "[t]he purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'" (*Memphis Light, Gas and Water Division v. Craft* (1978) 436 U.S. 1, 14.) "The notice . . . must afford a reasonable time for those interested to make their appearance, [citations]." (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) "[D]ue process does not require any particular form of notice. [Citations.] . . . All that is required is that the notice be reasonable. [Citations.]" (*Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 860.) Julie already knew that the request for order was pending. She had already opposed it in writing. Moreover, she was already present at the hearing on October 2. By granting Anthony's counsel's request to advance the hearing, the trial court gave her notice that she would need to address the request for order on October 2 rather than October 3. While this was certainly *very short* notice, it was not unreasonable on its face, and Julie did not show that it was unreasonable as applied to her. Once again, she did not claim to be unprepared, and there is no indication in the record that she was.

Julie relies on cases standing for the proposition that a defendant must have notice of the relief sought before a default judgment granting that relief can be entered. (E.g., *In re Marriage of Kahn* (2013) 215 Cal.App.4th 1113, 1117.) These are doubly inapropos.

First, Julie knew exactly what relief Anthony was seeking; and second, she did not fail to appear or otherwise "default."

We therefore conclude that the trial court did not err by advancing the hearing.

V

THE RELEVANCE OF THE FACT THAT THE CHILDREN WERE EXEMPT

A. *General Legal Background*.

Under Health and Safety Code section 120335, subdivision (b), a person "shall not [be] unconditionally admit[ted] . . . as a pupil of any private or public elementary or secondary school . . . unless . . . he or she has been fully immunized." Because almost all children are required to attend full-time public or private school (Ed. Code, §§ 48200, 48222), this effectively means they are required to be immunized, unless they are exempt.

The state immunization statutes allow for a medical exemption: "If the parent . . . files with the governing authority a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician does not recommend immunization, that child shall be exempt . . . ." (Health & Saf. Code, § 120370, subd. (a); see also 17 Cal. Code Regs. § 6051.)[1]

[1] Home-schooled children are also exempt. (Health & Saf. Code, § 120335, subd. (f).)

Until recently, the state immunization statutes also allowed for a personal belief exemption: "Immunization of a person shall not be required for admission to a school . . . if the parent or guardian . . . files with the governing authority a letter or affidavit that documents which immunizations required by Section 120355 have been given and which immunizations have not been given on the basis that they are contrary to his or her beliefs." (Health & Saf. Code, former § 120365, Stats. 2013, ch. 76, § 125; see also Stats. 1995, ch. 415, § 7, p. 2994.)

Effective January 1, 2016, however, the Legislature repealed the personal belief exemption, thus foreclosing new personal belief exemption claims. (Stats. 2015, ch. 35, § 4, p. 1441.) Existing personal belief exemptions were phased out, as follows:

"(1) A pupil who, prior to January 1, 2016, submitted a letter or affidavit on file at a private or public elementary or secondary school . . . stating beliefs opposed to immunization shall be allowed enrollment to any private or public elementary or secondary school . . . until the pupil enrolls in the next grade span.

"(2) For purposes of this subdivision, 'grade span' means each of the following:

"(A) Birth to preschool.

"(B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten.

"(C) Grades 7 to 12, inclusive." (Health & Saf. Code, § 120335, subds. (g)(1) & (g)(2).)[2]

[2] Here, none of the children was entering a new grade span in the 2017-2018 school year, and only one was going to enter a new grade span in the 2018-2019 school year.

B. *Discussion.*

Julie contends that, if a child is exempt from immunization under the state immunization statutes, a court lacks the power to order that child immunized under a best interest standard.

She relies on the "well-established principle[] of statutory interpretation" that "[t]o the extent a specific statute is inconsistent with a general statute potentially covering the same subject matter, the specific statute must be read as an exception to the more general statute. [Citations.]" (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 857.)

However, "'[t]he principle that a specific statute prevails over a general one applies only when the two sections cannot be reconciled. [Citations.]' [Citation.] If we can reasonably harmonize '[t]wo statutes dealing with the same subject,' then we must give 'concurrent effect' to both, 'even though one is specific and the other general. [Citations.]' [Citation.]" (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478.)

As discussed, the state immunization statutes require a child to have certain immunizations, subject to the specified exemptions. However, they do not purport to deal with whether a child who is exempt should be immunized as a matter of the child's own best interest. In particular, they do not address a situation in which one parent wants to claim an exemption while the other parent wants the child immunized. This is left to be resolved, like any other dispute over legal custody, by the trial court, under the best interest standard. (Fam. Code, §§ 3011, 3022.) Or, to put it more simply, just because immunization is not required does not mean it is forbidden.

Julie also contends that, as long as her immunization decision is in accordance with the state immunization statutes, it is necessarily in the children's best interest, as a matter of law. She explains: "The legislature has, effectively and preemptively with respect to the court's authority to apply a 'best interests' standard to parents' child custody disputes generally, determined that it is in all of the state's children's best interests to either be immunized or exempt according to the statutory laws."

To the extent that this merely restates her contention that a court lacks the power to order a child immunized when the child's parent has invoked an exemption, we reject it for the same reason. To the extent that this is a distinct contention, we reject it because she has not supported it with any citation of authority. "Issues not supported by citation to legal authority are subject to forfeiture." [Citation.]" (*People ex rel. Alzayat v. Hebb* (2017) 18 Cal.App.5th 801, 821, fn. 10.)

We know of no doctrine under which one state law can "preempt" another state law. Any apparent conflict merely presents an issue of statutory interpretation, and, in any event, we have already held that there is no conflict.

Finally, even assuming Julie is correct about the law, Anthony's immunization decision is also in accordance with the state immunization statutes — again, those statutes do not prohibit a parent from immunizing a child, even if the child is exempt. In this situation, the state immunization statutes simply offer no guidance as to which parent's choice should prevail. The trial court not only can but must make the decision.

VI

FREE EXERCISE OF RELIGION

Julie contends that the immunization order violates her constitutional right to the free exercise of religion.

While this appeal was pending, *Brown v. Smith* (2018) 24 Cal.App.5th 1135 rejected a similar contention. There, the plaintiffs were parents who objected to immunization of their children, on religious and other grounds. (*Id*. at p. 1140.) They argued that the repeal of the personal belief exemption violated their right to the free exercise of religion. (*Id*. at p. 1144.)

The appellate court held that "that 'mandatory vaccination as a condition for admission to school does not violate the Free Exercise Clause.' [Citation.]" (*Brown v. Smith, supra,* 24 Cal.App.5th at p. 1144.) It relied on "'persuasive dictum' in *Prince v. Massachusetts* (1944) 321 U.S. 158 . . . : '[T]he family itself is not beyond regulation in the public interest, as against a claim of religious liberty. [Citations.] And neither rights of religion nor rights of parenthood are beyond limitation. . . . [The state's] authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.' [Citation.]

"Even if we were to assume that laws requiring vaccination substantially burden the free exercise of religion and therefore merit strict scrutiny, plaintiffs' claim fails. (*Workman v. Mingo County Board of Education* (4th Cir. 2011) 419 Fed.Appx. 348, 353 [West Virginia's mandatory immunization program withstands strict scrutiny].) . . . *Workman* rejected the contention 'that because West Virginia law requires vaccination against diseases that are not very prevalent, no compelling state interest can exist.' [Citation.] 'On the contrary, the state's wish to prevent the spread of communicable diseases clearly constitutes a compelling interest.' [Citation.]" (*Brown v. Smith*, *supra*, 24 Cal.App.5th at pp. 1144-1145.)

Julie relies on *Wisconsin v. Yoder* (1972) 406 U.S. 205. *Brown*, however, stated: "*Yoder* . . . concerned compulsory school attendance, not immunization against contagious diseases. And, the court pointed out that the case was 'not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred,' and that a parent's power, 'even when linked to a free exercise claim, may be subject to limitation under *Prince* if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.' [Citation.]" (*Brown v. Smith*, *supra*, 24 Cal.App.5th at p. 1145.)

Here, the state immunization statutes do not require — yet — that Julie's children be immunized. The trial court, however, imposed an ad hoc immunization requirement, as being in the children's best interest. All of the reasons given in *Brown* for holding that

a state immunization requirement does not violate the right to the free exercise of religion apply equally here.

Julie also cites cases holding that, when a state offers a statutory religious exemption from an immunization requirement, it violates the First Amendment to limit that exemption to members of an organized or recognized religion. (E.g., *Lewis v. Sobol* (S.D.N.Y. 1989) 710 F.Supp. 506, 512-515; *Sherr v. Northport-East Northport Union Free School Dist.* (E.D.N.Y. 1987) 672 F.Supp. 81, 88-94; see also *Mason v. General Brown Cent. School Dist.* (2d Cir. 1988) 851 F.2d 47, 50-52 [statutory religious exemption encompassed unorthodox religious beliefs; however, plaintiffs' objection to immunization was secular].) These cases are not authority for the proposition that the First Amendment *requires* a state to offer a religious exemption.[3]

Woven throughout Julie's contention is the argument that there is no compelling interest in immunizing her children because they will be protected by herd immunity. She claims herd immunity means that "*all* are protected so long as *most* are immunized." Not so.

Herd immunity (also known as community immunity) is "[a] situation in which a sufficient proportion of a population is immune to an infectious disease (through

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[3] According to Julie, *Lewis* "said that *the state must provide* 'a general exemption for any person who opposes immunization of their child based on a sincerely held religious belief' . . . ." (Italics added.) That is not true. *Lewis* merely observed that the New York state statutory exemption *already* "includ[ed] a general exemption for any person who opposes immunization of their child based on a sincerely held religious belief." (*Lewis v. Sobol*, *supra*, 710 F.Supp. at p. 511.)

vaccination and/or prior illness) to make its spread from person to person unlikely. Even individuals not vaccinated . . . are offered some protection because the disease has little opportunity to spread within the community." (Centers for Disease Control and Prevention, Vaccines & Immunizations, Glossary, https://www.cdc.gov/vaccines/terms/glossary.html, as of Feb. 6, 2019.) "Some protection" is hardly a guarantee. Julie's children could still be infected by a child who is too young to be immunized, by another unimmunized child, or by a child who was immunized but did not become immune as a result. And at that point, they could similarly infect other children.

For these reasons, the immunization order does not violate Julie's right to the free exercise of religion.

VII

DISPOSITION

The order appealed from is affirmed. Because Anthony has not appeared, costs on appeal are not awarded to either party.

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RAMIREZ
P. J.

We concur:

MILLER
J.

SLOUGH
J.